Judiciary Administrator refusing to provide information about the dates of taking the Judicial Oath for assuming office of three judges and names of the officers administering their oath
(A case involving Code on Access to Information)

Investigation Report

The Complaint

This Office received two complaints from Mr K against the Judiciary Administrator (“JA”) for allegedly breaching the Code on Access to Information (“the Code”) in handling his two information requests.

2. In **Case I**, Mr K accused JA of refusing to disclose information relating to a judge (“Judge X”) on his first appointment as a judge (“Position 1”) and a Master (“Judge Y”) on her first appointment as a judicial officer (“Position 2”) and on her appointment to another position (“Position 3”).

3. In a subsequent case (“**Case II**”), Mr K accused JA of refusing to disclose information relating to another Master (“Judge Z”) on his appointment to Position 4.

4. In sum, Mr K requested the following information from JA in these two cases (see **para. 5** for details):

<table>
<tr><th>Information</th><th>Judge involved</th><th>Position involved</th><th>Items Mr K requested</th><th>Case</th></tr>
<tr><td>A</td><td>Judge X</td><td>Position 1</td><td rowspan="2">(a) date of appointment
(b) date of taking the Judicial Oath
(c) name of the officer</td><td rowspan="2">I</td></tr>
<tr><td>B1</td><td>Judge Y</td><td>Position 2</td></tr>
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B2	Judge Y	Position 3	administering the oath ("oath administrator")	
C	Judge Z	Position 4	(a) date of taking the Judicial Oath (b) name of the oath administrator	II

Sequence of Major Events

5. According to the information provided by Mr K and JA, the sequence of major events of the two cases is as follows:

Case I	
	Events
(1)	JA received Mr K's information request form requesting, *inter alia*, the following information: (a) dates of first appointment of Judge X as a judge and Judge Y as a judicial officer; (b) dates on which the two judges took the Judicial Oath when assuming office; and (c) names of the oath administrators for these two judges.
(2)	JA provided Mr K with the dates of appointment of Judge X to Position 1 and Judge Y to Position 2 (i.e. **Information A(a) and B1(a) in para. 4**). However, JA only confirmed to him that the two judges had, upon assumption of office, taken the oath as required by law, but did not provide the dates they took the oath and the names of the oath administrators.
(3)	JA received Mr K's information request form asking for **items (b) and (c) in para. 5(1)**, and the date of appointment of Judge Y to Position 3, the date she took the Judicial Oath when assuming office, and the name of the oath administrator (i.e. the three items **under Information B2 in para. 4**).
(4)	JA reiterated in its reply to Mr K that the two judges had taken the oath as required by law when assuming office, and provided to him only their dates of appointment to the positions (i.e. **Information A(a), B1(a) and B2(a) in para. 4**).

Case II	
	Events
(5)	JA received Mr K's information request form asking for several items of information, including the two mentioned

	under **Information C in paragraph 4**.
(6)	JA replied Mr K, stating that Judge Z had taken the oath as required by law when he assumed Position 4. It did not provide to him the information he requested.
(7)	Mr K wrote to JA and requested the two items as mentioned under **Information C in paragraph 4**.

Our Findings

Relevant Legislation

6. Article 104 of the Basic Law stipulates that when assuming office, judges of the courts and judicial officers must take an oath in accordance with law. Section 17 of the Oaths and Declarations Ordinance ("ODO") states that judges and judicial officers specified in Schedule 3 to ODO shall take the Judicial Oath, which shall be administered in the manner specified in that Schedule as soon as possible after his appointment. Part II of Schedule 3 to ODO states the oaths to be administered by a judge of the Court of First Instance of the High Court.

Consolidated Response from JA on the Two Cases

7. JA indicated that the information Mr K requested in the two cases involved personal data of the judges and oath administrators. In its replies to Mr K, JA confirmed that the three judges had taken the oath as stipulated by ODO. In other words, those judges had taken the oath at the time specified by ODO (i.e. after being appointed and when assuming office), and their oaths were administered by an officer specified (i.e. a judge of the Court of First Instance of the High Court, see **para. 6**). JA explained that in handling the two requests of Mr K, it had tried its best not to refuse the requests and to provide the information to him on the premise of non-disclosure of personal data of the personnel involved. As such, JA considered that it had released the requested information to Mr K in accordance with the Code, and there was no need to cite any reasons for non-disclosure as provided in the Code.

8. Yet, upon our investigation, JA reviewed the two cases again. After carefully considering the public interest involved and the possible harm that might result in disclosure, JA eventually agreed to release the rest of the information to Mr K (i.e. items (b) and (c) of **Information A, B1 and B2 in para. 4**, as well as the two items under **Information C**).

Our Comments

9. JA as an organisation covered by the Code should act in accordance with the Code and strive to provide to members of the public the information it holds unless there are good reasons under Part 2 of the Code for non-disclosure. In refusing an information request, a department should notify the requestor its reason(s) for non-disclosure by citing the relevant paragraph(s) in Part 2 of the Code as justification.

10. Regarding these two cases, Mr K was clearly asking JA to provide the exact dates the three judges took the oaths when assuming office and the names of the oath administrators. In our view, JA's replies simply explained the statutory requirement of oath-taking by judges when they assume office. This was obviously not the information Mr K was asking for. We were perplexed by JA's explanation that it had followed the Code and provided Mr K with the information he requested by merely confirming that the three judges had followed statutory requirement to take the oath when assuming office. (see **para. 7**).

11. Paragraph 1.6.3 of the Guidelines on Interpretation and Application of the Code stipulates that "*the information to be provided to an applicant should be the most recent and accurate one available which is **relevant to his request**.*" Even if JA wished to respond to Mr K's request and provide the information to him without divulging the personal data of the judges and the oath administers involved, it should have discussed with him and sought his consent, instead of simply using other information as a substitute. In fact, upon receipt of the initial replies from JA, Mr K again requested it to provide the information in question (see **paras. 5(3) and 5(7)**). Evidently, JA's replies had fallen short of Mr K's expectation. We considered JA's response incongruent with the spirit of the Code.

12. Furthermore, JA responded to Mr K's follow-up requests for information by sending to him again the same reply (see **para. 5(4)**), and chose not to provide the information in question or cite

the reasons as listed in Part 2 of the Code as justifications for non-disclosure. Its response obviously did not comply with the requirements and procedures set out in the Code.

13. It is a statutory requirement for judges and judicial officers to take an oath when they assume office. In the past, the Government would announce information about public officers taking oaths when they assumed office, and JA had also made announcements when the Chief Justice of the Court of Final Appeal took the oath upon assumption of office. It follows that such information may involve to some extent the public interest. Even if the information Mr K requested might involve the personal data of other persons, JA must still follow the requirements of the Code in handling and replying to his requests.

14. Overall, there were a number of inadequacies in JA's handling of the two information requests, which underlined a lack of thorough understanding of the Code. This Office was glad to note that upon review of the two applications, JA had provided Mr K with the information he requested (see **para. 8**).

Conclusion

15. In the light of the above, The Ombudsman considered both of Mr K's complaints against JA **substantiated**.

Recommendations

16. The Ombudsman recommended that JA step up its staff training on the Code and remind its staff to follow strictly the requirements of the Code in handling information requests from the public.

Office of The Ombudsman
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